IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION

WRIT PETITION NO.1139 OF 2004

1. The Union of India through)
The General Manager, Central)
Railway, Head Quarters Office,)
Mumbai, CST, Mumbai - 400 001.)
)
2. The Divisional Railway Manager)
Central Railway, Mumbai-I, Divn.)
Mumbai C.S.T. Maharashtra)
Mumbai - 400 001.) .....Petitioners.

V/s

1. Anilkumar H. Pandey,)
Wireman.)
)
2. Victor Francis Gunna,)
Wireman.)
)
3. Ramnayan Chotelal Yadav,)
Wireman,)
)
4. Sampat Shripati Pawar,)
Wireman.)
)
5. Jainath Ramnihar,)
Wireman.)

All are working under Electrical)
Superintendent, (Maintenance))
Wadi Bunder, Mumbai.) .....Respondents.

Mr. Suresh Kumar for the Petitioners.

Ms. Neelima G. Gohad i/b Mr. S.P. Saxsena for the Respondents.

CORAM: V.M. KANADE, J.
DATE : 26th April, 2007

ORAL JUDGMENT:-

1. Heard the learned Counsel appearing on behalf of the Petitioners and the learned Counsel appearing on behalf of the Respondents.

2. By this Petition, Petitioners are challenging the order passed by the Tribunal whereby a direction was given to the Petitioners that the Respondents - workmen would be deemed to be absorbed as wiremen from the date of their absorption as khalasis and that they would be deemed to be in the pay-scale of Rs 260-400 and they would be entitled to get the pay and allowances as admissible in that scale and further direction was given to the Petitioners to pay the said arrears and also decide their seniority from the date of their initial absorption.

FACTS:

3. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under:-

4. The Respondents were engaged as casual labourers on different dates. They were considered for regularization in the year 1981 and, accordingly, they were regularized as Group “D” employees between 1981-1983. The contention of the Respondents in their statement of claim was that they were working as khalasis from the date of their initial appointment and, thereafter, they were given the status of temporary employees and after they attained the status as temporary employees, they were paid wages of skilled category of wiremen. It is the case of the Respondents that when they were absorbed between 1981 to 1983 they ought to have been absorbed as wiremen and not as khalasis. It was contended by the workmen in their statement of claim that the absorption of the workmen as khalasis amounted to reversion from skilled category to unskilled category. When the dispute was raised, the Central Government referred the matter to the Central Government Industrial Tribunal. The terms of reference were as follows:-

> "Whether the action of the Central Railway administration while regularizing the 5 workmen, i.e. Sh. Jainath Ramnihar, Ram Narayan Chhotelal Yadav, Sampat Shripat Pawar, Victor Francis and Anil Kumar H. Pandey as Khalasis instead of absorption in skilled category is justified ? If not, to what relief are the workmen entitled to?"

After the parties filed their affidavits and documents, the Tribunal allowed the claim which was filed by the workmen.

5. The Petitioners, being aggrieved by the aforesaid judgment and order have filed this Petition under Articles 226 and 227 of the Constitution of India.

SUBMISSIONS:

6. It is submitted by the learned Counsel appearing on behalf of the Petitioners that the Tribunal had erred in coming to the conclusion that the absorption of the workmen

as khalasis amounted to reversion. He submitted that the workmen were casual labourers and they were given temporary status and, therefore, they had no legal right of being absorbed in the post of wireman directly. He submitted that the post of wireman was filled up in three ways; firstly by direct recruitment, secondly by promotion and thirdly by absorption. He submitted that, in the present case, the post of wireman fell under Group “C” and the post of khalasi was in Group “D” category. He submitted that, therefore, the workmen were rightly absorbed in the category of khalasis and they, in due course of time, were promoted as wiremen. He submitted that apart from there being a gross delay in filing reference, Tribunal had committed an error of law which is apparent on the face of the record in holding that the absorption of the workmen in the post of Khalasi amounted to reversion. He invited my attention to the judgment of the Apex Court in the case of Badri Prasad and Ors. Vs Union of India and Ors reported in **2005(2) SCSLJ 149**. He invited my attention to the Full Bench decision of the Central Administrative Tribunal in the case of Aslam Khan Vs. Union of India and Ors in O.A. No.57 of 1996

dated 30/10/2000 for the purpose of pointing out that in the case of similarly situated workmen absorption of these workmen in Group “D” post was accepted and the Supreme Court and the Full Bench of the Tribunal had protected the salary which was last drawn by them in Group “C” post.

7. The learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that when the workmen were granted temporary status, at that time itself they were absorbed by the Respondents. She submitted that, therefore, after having allowed the workmen to work in the category of skilled workmen, it was not open for the Petitioners to absorb them in Group “D” which was a group lower than the group in which they were appointed as temporary workmen. She invited my attention to the finding recorded by the Tribunal and submitted that there was no reason to interfere with the substantive finding.

FINDINGS AND CONCLUSION:

8. I have given my anxious consideration to the

submissions made by the learned Counsel for the Petitioners and the Respondents. In my view, Tribunal has clearly erred in passing the impugned order and holding that the workmen were entitled to be appointed as wiremen from the date of their absorption. It is admitted position that the workmen were appointed as casual labourers and, thereafter, they were given temporary status. The rules and regulations which are applicable to the Group “D” and Group “C” post do not treat the temporary employees as regular employees and, therefore, the submission of the learned Counsel for the Respondents cannot be accepted. Though the Respondents were working as wiremen, they were doing so as temporary employees and, therefore, the Petitioners were fully justified in absorbing them as khalasis and thereby granting them permanent status. The Supreme Court also in in the case of Badri Prasad and Ors. (supra) arising out of similar facts and circumstances had only granted protection in respect of last pay which was drawn by them in Group “C” and that even after their repatriation to Group “D” post in their parent department, the workmen were entitled to the said pay. In the present case, the

workmen have already been promoted to the post of wiremen. It is submitted by the learned Counsel appearing on behalf of the Petitioners that so far as the Respondents are concerned, they were already given the pay-scale of Group “C” and, therefore, in the facts and circumstances of the present case, separate direction need not be issued by this Court. In view of this, the order passed by the Tribunal is set aside. Writ Petition is allowed in terms of prayer clause (a). Rule is made absolute in the above terms.

(V.M. KANADE, J.)